

**WAC 458-20-186 Tax on cigarettes.** (1) **Introduction.** This section explains the tax liabilities of persons who sell, use, consume, handle, possess or distribute cigarettes in this state. It addresses only those taxes which apply exclusively to cigarettes. See WAC 458-20-185 for tax liabilities associated with tobacco products other than cigarettes.

(2) **In general.** The Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state.

(a) For purposes of this rule, a possessor is anyone who personally or through an agent, employee, or designee has possession of cigarettes in this state.

(b) Payment is made through the purchase of stamps from banks authorized by the department of revenue to sell the stamps.

(3) **Rates.** The Washington state cigarette tax is imposed on a per cigarette basis. The rate of tax is a combination of statutory rates found in RCW 82.24.020 and 82.24.027. Charts with current rates are available from the special programs division at the department of revenue.

(4) **Exemptions.** To qualify for exemptions from the tax, certain procedures must be followed. Exemptions and their procedures are as follows:

(a) The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette distributors in other states when, as a condition of the sale, the seller either delivers the cigarettes to such a buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to such a buyer at a location outside this state. Any person engaged in making sales to licensed distributors in other states or making export sales (see WAC 458-20-193 and 458-20-193C) or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax which would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette tax stamps. Such unstamped stock must be kept separate and apart from any stamped stock.

(b) The cigarette tax does not apply to cigarettes in the possession of a person authorized to purchase cigarettes at a military facility when purchased for their own consumption.

(c) The cigarette tax does not apply to cigarettes sold at an outlet on an enrolled Native American tribal member's tribal reservation to an enrolled Native American tribal member for personal consumption. Cigarettes sold to an enrolled tribal member must be stamped, but are untaxed due to the exempt nature of the sale. However, sales made by a Native American cigarette outlet to nontribal members are subject to the tax. These cigarettes are both stamped and taxed.

(5) **Liability, collection and stamps.** Every person unlawfully in possession of unstamped cigarettes in this state shall be liable for the cigarette tax provided for herein.

(a) Ordinarily, the tax obligation is imposed and collected on the first possessor of such unstamped cigarettes. However, failure by the first possessor to pay such tax does not excuse any subsequent possessor of unstamped cigarettes.

(b) Stamps indicating the payment of the cigarette tax must

be affixed prior to any sale, use, consumption, handling, possession or distribution for all cigarettes other than those mentioned in (4)(a) of this section. The stamp must be applied to the smallest container or package, unless the department determines that it is impractical to do so.

(c) Every licensed stamping wholesaler shall stamp those cigarettes that require stamping within 72 hours after receipt, but in any event, on or before sale or transfer to another party.

Stamps shall be of the type authorized by the department which at present is the heat applied "fuson" type. The use of meter stamping machines for use in imprinting packages, in lieu of attaching stamps, is not authorized by the department. The use of water "decalcomania" type stamps by such vendors is not authorized.

(d) Persons other than licensed stamping wholesalers must file with the department of revenue, prior to receipt, a notice of intent to possess unstamped cigarettes in the state of Washington. A copy of this notice, validated by an agent of the department of revenue, must be in the possession of any such person who is in possession of unstamped cigarettes in this state.

(e) Persons who have filed the notice must bring the cigarettes to a department office for payment of the tax within 72 hours of receipt, but in any event, on or before sale or transfer to another party. Failure to file this notice will subject the person in possession of such cigarettes to criminal sanctions as set forth in subsections (9) and (10) of this section.

(f) Any unstamped or untaxed cigarettes in the possession of persons (other than licensed stamping wholesalers) who have failed to file a notice of intent to possess unstamped cigarettes in the state of Washington or who have failed to affix stamps and/or who have failed to pay the tax as required herein, will be deemed contraband and subject to seizure and forfeiture under the provisions of RCW 82.24.130.

(g) State approved cigarette stamps are available from authorized banks. Payment for stamps may be made either at the time of purchase of the stamps from the banks, or deferred until later, although the latter form of payment is available only to vendors who meet the requirements of the department and who have furnished a surety bond equal to the proposed total monthly credit limit. In addition, purchases on a deferred payment plan may be made only by the cigarette seller or by an agent authorized by the cigarette seller to do so. This authorization may be in the form of a signature card, filed with the bank, from which stamps are usually obtained, and kept current by the vendor. Payments under a deferred plan are due within 30 days following the purchase, and are to be paid at the outlet from which the stamps were obtained, and may be paid by check payable to the department of revenue. Cigarette wholesalers who purchase stamps under either plan are allowed a discount of \$4.00 per thousand stamps affixed, which is offset against the purchase price.

(h) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax. Failure by the first person to pay the additional tax arising from the first taxable event does not

relieve subsequent individuals of tax liability arising from a subsequent taxable event.

(6) **Books and records.** An accurate set of records showing all transactions had with reference to the purchase, sale or distribution of cigarettes must be retained.

(a) These records may be combined with those required in connection with the tobacco products tax, by WAC 458-20-185, provided there is a segregation therein of the amount involved. All such records must be preserved for five years from the date of the transaction.

(b) Persons shipping or delivering any cigarettes to a point outside of this state shall transmit to the special programs division, not later than the 15th of the following calendar month, a true duplicate invoice showing full and complete details of the interstate sale or delivery.

(7) **Reports and returns.** The department of revenue may require any person dealing with cigarettes, in this state, to complete and return forms, as furnished, setting forth sales, inventory and other data required by the department to maintain control over trade in cigarettes.

Manufacturers and wholesalers selling stamped, unstamped or untaxed cigarettes shall, before the 15th day of each month, transmit to the special programs division a complete record of sales of cigarettes in this state during the preceding month.

(8) **Refunds.** Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. Documentation supporting the claim must be provided at the time the claim for refund is made.

(a) Refunds for stamped untaxed cigarettes sold to Native American individuals or tribes (see subsection (4)(c) of this section will include the stamping allowance and will be approved by an agent of the department.

(b) Refunds for stamped cigarettes will not include the stamping allowance if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor.

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improper removal from the stamp roll.

(c) The claim for refund must be filed on a form which is provided by the department, Form REV 37-2063. An affidavit or a certificate from the manufacturer claiming refund, or by the agent of the department verifying the voiding of stamps and authorizing the refund, shall accompany the form.

(9) **Criminal provisions.** RCW 82.24.110(1) prohibits certain specified criminal activities with respect to cigarettes and makes such activities gross misdemeanors. Also, RCW 82.24.100 and 82.24.110(2) prohibit alteration or fabrication of stamps and transportation and/or possession of 300 or more cartons of unstamped cigarettes and makes those activities felonies. Persons commercially handling cigarettes in this state must refer to these statutes.

(10) **Search, seizure and forfeiture.** The department of revenue may search for, seize and subsequently dispose of unstamped cigarette packages and containers, vehicles of all kinds utilized for the transportation thereof, and vending machines utilized for the sale thereof. Persons handling

unstamped cigarettes in this state must refer to RCW 82.24.130 and subsequent sections for provisions relating to search, seizure and forfeiture of such property, for possible redemption thereof, and for treatment of such property in the absence of redemption.

(11) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause such stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax found to be due, a penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars shall be assessed. Interest shall also be added at the rate of one percent for each thirty days or portions thereof from the date the tax became due. The department may cancel all or part of the penalty for good reason.

[Statutory Authority: RCW 82.32.300. 94-10-062, ' 458-20-186, filed 5/3/94, effective 6/3/94; 90-24-036, ' 458-20-186, filed 11/30/90, effective 1/1/91; 90-04-039, ' 458-20-186, filed 1/31/90, effective 3/3/90; 87-19-007 (Order ET 87-5), ' 458-20-186, filed 9/8/87; 83-07-032 (Order ET 83-15), ' 458-20-186, filed 3/15/83; Order ET 75-1, ' 458-20-186, filed 5/2/75; Order ET 73-2, ' 458-20-186, filed 11/9/73; Order ET 71-1, ' 458-20-186, filed 7/22/71; Order ET 70-3, ' 458-20-186 (Rule 186), filed 5/29/70, effective 7/1/70.]